

FILEDDEC 14 2007 *aw*

DEC 14, 2007

Rev. 10/02

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODYMICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT		Northern District of Illinois	
Name of Movant	Fabio Carani	Prisoner No.	21827-42 Case No. 05-CR-150
Place of Confinement		FCI Ashland, Kentucky	
UNITED STATES OF AMERICA		V. Fabio Carani (name under which convicted)	
MOTION			
1. Name and location of court which entered the judgment of conviction under attack: <u>U.S. District Court for the Northern District of Illinois, Eastern Division</u>			
2. Date of judgment of conviction: <u>March 16, 2006</u>			
3. Length of sentence: <u>72 months</u>			
4. Nature of offense involved (all counts): <u>Count One: violation of 18 U.S.C. § 2252A(a)(5)(B)</u>			
5. What was your plea? (Check one)		07cv7040 JUDGE GRADY MAG. JUDGE DENLOW	
(a) Not guilty <input checked="" type="checkbox"/>			
(b) Guilty <input type="checkbox"/>			
(c) Nolo contendere <input type="checkbox"/>			
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: <u>na</u>			
6. If you pleaded not guilty, what kind of trial did you have? (Check one)			
(a) Jury <input checked="" type="checkbox"/>			
(b) Judge only <input type="checkbox"/>			
7. Did you testify at trial? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			

9. If you did appeal, answer the following:

(a) Name of court to which you appealed: Seventh Circuit Court of Appeals

(b) Date the appeal was filed: December 8, 2006

(c) Result: affirmed judgment and conviction

(d) Date of result and citation, if known: July 6, 2007

(e) Grounds raised: (1) error in giving ostrich instruction to jury; (2) error

in giving "strongly suspected" supplemental jury instruction; and

(3) error in imposing distribution enhancement

(f) If you sought further review of this decision by petitioning for certiorari in the United States Supreme Court, please answer the following with respect to your direct appeal:

(1) The date the petition for certiorari was filed: October 23, 2007

(2) Result: unknown

(3) Date of result and citation, if known: unknown

(4) Grounds raised: erroneous jury instruction; sentencing error

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in *any* federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information (Use separate section for each petition/application/motion filed). You may attach additional pages if you filed more than two petitions/applications/motions:

First petition/application/motion

(a) Name of court: na

(b) Date the first petition, application, or motion was filed: na

(c) Nature of proceeding: na

(d) Grounds raised: na

(e) Did you receive an evidentiary hearing on your petition, application, or motion? Yes ☐ No ☒

(f) Result: na

(g) Date of Result: na

(h) Did you appeal to an appellate federal court having jurisdiction, the result of action taken on any petition, application, or motion?

Yes ☐ No ☐ na

(i) If your answer to (h) was "yes,"

(1) Name of court: na

(2) Date the appeal was filed: na

(3) Grounds raised: na

(4) Result: na

(5) Date of Result: na

(j) If your answer to (h) was "no," explain briefly why you did not file an appeal: na

(k) If you sought further review of this decision by petitioning for certiorari in the United States Supreme Court, please answer the following with respect to your second petition, application, or motion:

(1) The date the petition for certiorari was filed: na

(2) Result: na

(3) Date of result and citation, if known: na

(4) Grounds raised: na

12. State *concisely* every ground on which you claim that you are being held in violation of the Constitution, laws or treaties of the United States. Summarize *briefly* the *facts* that support each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these types of proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, *you should raise in this motion all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective assistance of counsel during plea negotiations.

Supporting FACTS (state *briefly* without citing cases or law): _____

Counsel failed to inform Petitioner of the risks of proceeding to
trial versus accepting plea proposal; counsel failed to discuss plea
proposal. [Please see memorandum of law in support].

B. Ground two: Ineffective assistance of counsel for failing to investigate
and present available evidence in support of defense.

Supporting FACTS (state *briefly* without citing cases or law): _____

Counsel failed to discover and use reports that were published in 2002
that would have supported Petitioner's theory of defense. [Please see
memorandum of law in support].

C. Ground three: Ineffective assistance of counsel, due to counsel's failure to
challenge the constructive amendment of the indictment.

Supporting FACTS (state *briefly* without citing cases or law): _____

The Court constructively amended Count One of the indictment by its
supplemental jury instructions. [Please see memorandum of law in
support].

D. Ground four: Ineffective assistance of counsel for failing to argue that
the supplemental jury instruction resulted in a general verdict.

Supporting FACTS (state *briefly* without citing cases or law): _____

The supplemental jury instruction resulted in an impermissible
general verdict. [Please see memorandum of law in support].

13. If any of the grounds listed in 12A, B, C or D were not previously presented, state briefly what grounds were not so presented and give your reasons for not presenting them: _____

***see attached for Grounds E through I.

The above grounds were not presented due to ineffective assistance
of counsel.

14. Do you have any petition(s), application(s), motion(s), or appeal(s) now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Dennis Berkson; 180 North LaSalle, Suite 1925; Chicago, Ill

(b) At arraignment and plea: na

(c) At trial: Carolyn Gurland; 53 West Jackson Blvd., Suite 1420; Chicago, Ill.

(d) At sentencing: same

(e) On appeal: Erik Guenther; 10 E. Doty Street, Suite 320; Madison, WI 53704

(f) In any post-conviction proceeding: none

(g) On appeal from any adverse ruling in a post-conviction proceeding: na

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give the name and location of the court which imposed the sentence to be served in the future: _____

na

(b) Give date and length of the above sentence: na

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes ☐ No ☒ na

ADDITIONAL GROUNDS

Ground E: Ineffective assistance of counsel, due to counsel's failure to inform Petitioner of risk of testifying, and for failing to inform Petitioner whether or not to testify belonged to Petitioner

[Please see memorandum of law in support].

Ground F: Ineffective assistance of counsel, due to counsel's failure to present evidence and argument at sentencing and on appeal that would have sustained Petitioner's objection to the 2-level enhancement for distribution.

[Please see memorandum of law in support].

Ground G: Ineffective assistance of counsel, due to counsel's failure to argue at sentencing and on appeal that Petitioner's sentence was imposed in violation of his 5th & 6th Amendment rights.

[Please see memorandum of law in support].

Ground H: Ineffective assistance of counsel, due to counsel's failure to properly challenge the 5-level enhancement at sentencing, and failure to raise the issue on appeal.

[Please see memorandum of law in support].

Ground I: Ineffective assistance of counsel, due to counsel's failure to challenge the sufficiency of the evidence on appeal.

Wherefore, Movant prays that the Court grant him/her all relief to which he/she may be entitled in this proceeding.

NA

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/1/07
Date

Fabio Ceram
Signature of Movant

I hereby certify that this motion was delivered to the prison mail system for mailing on 12/1/07
Date

Fabio Ceram
Signature of Movant